

IN SEARCH OF A PROBLEM: THE FUTURE OF THE AGREEMENT ON INTERNAL TRADE AND CANADIAN FEDERALISM

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I. INTRODUCTION

TEN YEARS AGO, FREQUENT MEDIA EDITORIALS indicted Canada for the presence of large, interprovincial trade barriers that were supposedly preventing Canadians from having a truly united country. In reality, the reported angst over a divided Canada was greatly overstated. Those interested in an "economic union" were motivated less by national unity than by corporate interest. Nonetheless, the hubbub led the federal and provincial governments to negotiate an *Agreement on Internal Trade (AIT)*, which came into effect July 1, 1995.

Five years later, internal trade is back on the radar again. The federal government and the provinces are in the midst of negotiations to expand the *Agreement on Internal Trade*. Advocates of expansion want broader coverage, stronger enforcement powers, and a greater capacity for corporations to directly challenge government policy measures.

The big question marks are what benefits these negotiations will bring to ordinary Canadians and what harm will be done to vital environmental, health, social and regional development policies. Any barriers to trade within Canada are minuscule at most, and to the extent that they existed in the past (such as trade restrictions in alcoholic beverages), they have already been resolved. Current negotiations offer little in the way of addressing practical problems. Indeed, if the agenda were limited to real problems, there would not be much at all on the negotiating table. In many respects, the *AIT* is a solution in search of a problem.

The main objective of current negotiations, like the original *AIT*, is to promote an agenda of privatization and deregulation that will handcuff governments in the future. A second objective is to facilitate Canada's international trade commitments – NAFTA, the WTO, and other bilateral agreements. The language and rules of the *AIT* directly parallel those in international agreements, and are rooted in the same simplistic philosophy of "markets good, governments bad".

The key issue of the *AIT* is not "trade barriers" but differences in how provinces regulate, and how these regulations affect business costs when moving goods, services and investment across provincial boundaries.

Thus, under attack is the ability of provincial governments to set higher standards for environmental protection, labour regulation, consumer protection, not to mention the ability of provinces to influence regional economic development.

II. THE RHETORIC AND REALITY OF INTERNAL TRADE

A. Exaggerated Barriers

Claims that Canada has large internal trade barriers should be treated with a great deal of suspicion. Most serious studies conclude that there are few significant obstacles to trade and investment within Canada. There are no customs inspection stations at provincial boundaries, nor any kind of tax or tariff on interprovincial trade. Canadians use the same currency, and share common legal, financial and economic institutions. Canadians are free to move and work anywhere in the country they wish.

There are, of course, differences across provinces in government procurement policies, labour standards, consumer protection measures, environmental regulations, and taxes. But the degree of trade distortions as a result of these differences, and the benefits of removing them, have been heavily exaggerated by pushers of internal trade. To the extent that there are "barriers" they are quite small, and exist only in a limited number of areas.

Many studies have found Canadian provinces are more likely to trade with other provinces than with US states by a large margin. Using "gravity" models, where expected trade flows are a function of distance and market size, economists have found that Canadians trade relatively more with each other than they "should" (indeed, this is considered a puzzle in the economics literature).¹ Even as the Canada-US Free Trade Agreement and the NAFTA have increased north-south trade, Canadian provinces are still relatively more likely to trade with each other by 15 times than with American states. Given that Canada-US trade barriers are now quite small, this research suggests that interprovincial barriers must be minuscule.

In spite of evidence that suggests few impediments to interprovincial trade, calls from the business community continue to rail against "large interprovincial trade barriers". Frequently invoked is an old study by the

¹ The original work in this area was done by John McCallum of the Royal Bank and John Helliwell of UBC (1995).

Canadian Manufacturers' Association (now the Alliance of Manufacturers and Exporters of Canada), a leading supporter of the *AIT* process in the early 1990s. Couched in nationalist rhetoric, the CMA called for the "creation of a single economic market in Canada", with the implication that by eliminating trade barriers, growth would be enhanced by the new efficiencies gained.

The CMA estimated that gains of \$6.5 billion – about 1% of GDP at the time – would result from eliminating trade barriers. However, economists that have looked at these numbers more closely have found the CMA study seriously flawed. While focusing on the costs of existing policies, the CMA completely ignored the benefits of having regulations and standards in place for legitimate public policy objectives, and the benefits to the local economy of economic development policies. When these are taken into account, studies find that the efficiency costs of provincial policies that affect internal trade are closer to 0.05% of GDP.²

The bulk of supposed benefits in the CMA study – \$5 billion out of the total \$6.5 billion – were in the area of government procurement. While it is acknowledged that procurement policies are not particularly trade-distorting, the rationale was that liberalized procurement would lead to cost savings for governments. However, the \$5 billion number was quite arbitrary and ignored the benefits that result from provinces having discretion over procurement practices (procurement in the *AIT* is discussed in more detail in the next section).

Trade in alcoholic beverages was another major area cited by the CMA, with an estimated \$500 million in gains from removal of barriers. This was an area where there was a classic barrier to trade, as provinces required local production in exchange for access to local markets. This meant that, for example, people living in Ontario were unable to purchase Moosehead beer from the Maritimes. These barriers have already been removed, although the social benefits of this move are dubious at best.

A final objective of the CMA paper was to advocate the elimination of marketing boards in agriculture (a supposed \$1 billion in gains), a proposal that did not ultimately get into the *AIT*. It is important to note that the impact of marketing boards is distributional in nature: they enable farmers to earn higher and more stable incomes, while increasing prices for consumers. Marketing boards also serve to protect the domestic industry from international competition. When these factors are taken into account, the real efficiency cost is negligible.

² Cost-benefit assessments of internal trade barriers here and below are drawn from a literature review by Copeland (1998).

Focusing the discussion on "trade barriers" diverts attention from the real issue: the presence of laws, regulations and policies at the provincial level that exist to promote economic development; protect consumers, workers and the environment; and, to set minimum standards that businesses must abide by. While there may be an additional cost to doing business as a result, these policies exist for a reason. Because provinces have different regional circumstances, economic and social conditions and resource endowments, diverse policy responses must be accommodated. In areas of provincial jurisdiction, provincial governments will make differing policy choices about how best to regulate to achieve important policy goals. This diversity is a legitimate feature of Canadian federalism and democracy.

In a study of interprovincial trade barriers, UBC economist Brian Copeland notes: "Because trade barriers between the provinces are low, efforts to liberalize those barriers that do exist are likely to have only a small effect on trade flows. Much of the debate is not really about interprovincial trade, but rather about how decentralized the policy regime should be in Canada and how much flexibility governments should have to intervene in markets." (p. 4)

It is interesting that those wrapping themselves in the flag by calling for the removal of internal trade barriers are the same ones that called for NAFTA and the WTO. The irony of their position is that, historically, high Canadian external tariffs were used as a deliberate policy to foster east-west (i.e. Canadian) trade. The legacy of such nation-building policies accounts for the bulk of current high levels of interprovincial trade. If *AIT* proponents were serious about increasing interprovincial trade, raising international trade barriers would be the best way of achieving that goal. The real agenda for business lobby groups supporting the *AIT* is not strengthening the Canadian economic union, but advancing their own corporate interests: commercialization, deregulation and privatization.

B. Implementing NAFTA

The impetus for the *AIT* came in the late 1980s and early 1990s, amidst a wave of international trade agreements signed by Canada. The Canada-US Free Trade Agreement came into effect in 1989, and with the inclusion of Mexico, was broadened and deepened into NAFTA in 1994. The previous framework for international trade, the General Agreement on Tariffs and Trade, was transformed into the much more comprehensive World Trade Organization in 1995. The *Agreement on Internal Trade* came into force on July 1, 1995, shortly after these sweeping international trade agreements.

Apart from the policy fashion of liberalization, the *AIT* served a very

practical purpose to facilitate the implementation of Canada's international trade commitments. This was much more important than stated needs to "strengthen the Canadian union." NAFTA Article 105 specifies that: "The parties shall ensure that *all necessary measures* are taken in order to give effect to the provisions of this *Agreement*, including their observance, except as otherwise provided in this *Agreement*, by state and provincial governments. [*italics by author*]" The WTO has a similar clause, although with somewhat weaker language, in GATT Article XXIV:12, which states that WTO Members "...shall take such reasonable measures as may be available to it to ensure such observance by regional and local governments and authorities within its territory."

The major stumbling block for implementation of international trade agreements is the federal nature of Canadian government. The Constitution sets out a division of legislative powers between federal and provincial governments. Historically, there has been a tension in Canadian federalism between the idea of a strong central government and a cooperative federalism. This tension plays out most significantly where there are blurry lines in the interpretation of federal and provincial powers.

Section 91 of the Constitution gives jurisdiction to the federal government over the "regulation of trade and commerce" with the general provision to "make laws for the peace, order and good government of Canada." In addition, section 121 states that: "All articles of the growth, produce, or manufacture of any one of the provinces shall, from and after the Union, be admitted free into each of the other provinces." These parts of the Constitution support the idea of a common market within Canada. Provincial governments, however, have autonomy to act to protect regional diversity and to govern in different ways appropriate to provincial circumstances. Provinces have responsibility over property and civil rights, most areas of labour, education, health care, consumer protection, licensing and investment.³

A landmark case related to international agreements and Canadian federalism was the 1936 *Labour Conventions* case. The federal government at the time wanted to sign onto international labour conventions, but was opposed by the provinces who saw this as an imposition into areas of provincial jurisdiction. The case went to the Privy Council (i.e. the "Supreme Court" at the time), which ruled that the federal government can negotiate international agreements, but cannot implement them in areas of provincial jurisdiction.

³ See Appleton (1994) for detail on federal and provincial powers in the context of NAFTA.

The ambiguity around jurisdiction remains to this day, and underlies the desire for an *AIT* as a political arrangement that parallels international trade agreements. The intention of the *AIT* was, according to trade policy specialist Scott Sinclair, "to clear obstacles to NAFTA implementation and, specifically, ease the federal government's task of implementing NAFTA in areas of provincial jurisdiction."⁴

One danger inherent in this is that rights granted through the *AIT* set the standard for national treatment under Canada's international agreements. Under the NAFTA and the WTO, foreign traders, service providers and investors are legally entitled to the best treatment Canadian governments give to domestic goods, services and investment. In other words, foreign companies gain additional rights in the NAFTA and under the WTO agreements through the *AIT* "back door". And while the *AIT* is not (yet) a legally enforceable agreement, the NAFTA and WTO agreements are. The full extent of these rights will hinge on decisions made by *AIT* trade dispute panels in the future.

In at least several areas, this is likely to be significant:

- If, as some provinces are demanding, the *AIT* covers Canadian health care, education, and social services this could lead to the erosion of vital exemptions in the NAFTA and the WTO agreements, and to international commitments kicking in with regard to national treatment in these areas.
- Only federal government procurement is covered by Canada's international trade agreements. However, the *AIT* effectively clears the way for an expansion of the NAFTA to provincial government procurement. Already, foreign corporations with a local presence in Canada have the same access to provincial procurement opportunities as Canadian companies.
- Regressive rulings by *AIT* dispute panels, such as the attack on the precautionary principle by the *AIT* panel in the MMT case (see below), will be invoked by foreign companies under the NAFTA and other international agreements.

The *AIT* acknowledges this risk, and in Article 1809 states that: "Nothing in this *Agreement* is intended to provide . . . to any national, enterprise, state or other person any right, claim or remedy under any international agreement." Article 1809 further provides that if a trading partner "succeeds in establishing a right under an international agreement based on a provision of [the *AIT*], that provision is to that extent of no force or effect."

⁴ Sinclair (1994), p. 1.

This intended safeguard would almost certainly be ineffective in reversing the damage done by an international panel decision. Changes to the *AIT* would have to be made retroactively in the aftermath of an international panel ruling. Furthermore, international trade law does not allow a country to invoke provisions of its internal law as justification for failing to abide by its international treaty obligations. Indeed, the legalistic language of the *AIT* exacerbates the potential for legal challenges under the NAFTA and the WTO precisely because it so closely mirrors the language of those international agreements.

III. INSIDE THE *AIT*

THE *AIT* IS ADMINISTERED BY THE INTERNAL TRADE SECRETARIAT, based in Winnipeg. The *AIT*'s supreme body is the Ministerial-level Committee on Internal Trade, co-chaired by the federal Minister of Industry and a rotating provincial co-chair, currently from Alberta.

This section provides an overview of the *AIT*'s key principles and obligations, and the dispute settlement mechanism.⁵ The analysis then turns to the status and key issues of current *AIT* negotiations.

A. The Existing Agreement

The *AIT* sets out a number of general rules that affect trade. In brief, the *AIT* states that:

- Provinces must extend the best treatment of its own goods, services, investments and persons to other provinces. Called "Reciprocal Non-discrimination", this provision is the *AIT* equivalent of "national treatment" in international agreements.
- Provinces cannot restrict the movement of goods, services, investments or persons. While in practice provinces have not used import and export quotas, this "Right of Entry and Exit" article could, in principle, prevent governments from requiring local processing of natural resources, giving preferences to locally-based health and social service providers, or from restricting transport of hazardous waste.
- Provinces must ensure that any measure adopted or maintained does not operate as a barrier to internal trade. The key word here is "measure", which can be broadly interpreted to mean any policy or action

⁵ For a more detailed analysis of an early draft text of the *Agreement* and its implications, see *Shifting Powers, Depressing Standards*, by Scott Sinclair, released by the CCPA, 1994.

by government, whether direct or indirect, rather than applying only to specific laws or regulations.

These are powerful principles that if fully implemented would threaten a diverse range of provincial and federal policies and programs. In reality, the sectoral chapters of the *AIT* do not fully apply them, and in each area, provinces have negotiated exemptions for particular sectors or programs (for example, currently, the *AIT* does not apply to natural resource licensing or water). In addition, Article 404 enables provinces to pursue "legitimate objectives", if their measures pass a four-part test. However, the test is rather difficult to pass, due to the leeway given to panelists to strike down a measure, and the fact that the burden of proof is on the province being challenged to demonstrate that its measure passes the four-part test (rather than on the challenger to prove that it does not).

Provincial and federal governments are also called upon to reconcile their standards through "mutual recognition" (accepting the standards of other provinces even if they are not up to your own) and "harmonization" (minimizing the differences in standards). Both elements create a framework biased toward the downward movement of standards relating to the environment, consumer protection and labour, and impair the ability of provinces to set higher standards in the future.

As noted above, a key element of the *AIT* is government procurement. The rationale is that the benefits of purchasing from the lowest cost supplier lead to cost savings for governments. However, this analysis typically disregards both the benefits of having greater government discretion over procurement and the administrative costs imposed by an inflexible, rules-based system with formal dispute settlement. Notably, most private sector companies do not operate this way in their own purchasing policies, often preferring long-term relationships with a small number of suppliers.

Proponents of the *AIT* procurement rules usually ignore the additional costs they impose on the public sector. This process can lead to more cumbersome administration, as governments must review large volumes of bids and justify their choices based on narrow cost criteria. This conflicts with other factors, such as quality considerations, that necessitate discretion on the part of governments to ensure that the best bid is chosen. Additional costs may arise from appeals and litigation over awarded contracts. Ultimately, whether the *AIT*'s Procurement chapter does indeed lower costs for governments is debatable. Its "one-size fits all" rules may even discourage innovative and cost-effective procurement practices.

More significantly, the *AIT* reduces provincial capabilities to use procurement for economic development purposes. Even if procurement costs

are higher when purchasing from local firms, the economic spin-offs from the use of procurement as a public policy tool to benefit the local economy, or to ensure high quality, good wages and environmental protection, are significant, and must also be taken into account.

Other chapters of the *AIT* specifically address consumer protection, environmental and labour standards. These chapters establish measures in these areas as "barriers" because they increase the cost of doing business and inhibit companies from taking advantage of economies of scale. This is balanced against recognition that governments have legitimate reasons to enact such standards. Thus, protections in these areas are not clear cut and the *AIT* sets up a process whereby dispute panels, who tend to view the cases with a narrow trade-opening lens, will be the arbiters of whether standards in the public interest are determined to be "barriers". Like international agreements, public policy considerations are typically treated as secondary to the imperative of liberalization.

B. Dispute Settlement and Cases

The *AIT* sets out a four-step process for dispute settlement that allows complaints against governments for perceived violations of the *Agreement*. It is important to note that the *AIT* is a political agreement, not a legal one. Provinces have agreed to work together, but dispute panel decisions are not binding.

The dispute resolution process has two components: a state-to-state process; and an investor-state process. Like the NAFTA, the *AIT* enables businesses to challenge government policy measures, which tends to increase the number and expense of disputes. However, unlike the NAFTA there is a screening process in place that enables provincial governments to refuse to bring a case forward. The *AIT* also enables individual workers and consumers to challenge government policy measures.

As of April 2000, 84 complaints had been made under the *AIT*. Of 78 that have been resolved (6 are still pending), 62 were disputes about procurement, and most of these referred specifically to the procurement practices of the federal government. The federal government is the only government that has voluntarily subjected *AIT*-related procurement disputes to binding dispute settlement under the Canadian International Trade Tribunal, a quasi-judicial body that also adjudicates NAFTA and WTO-related procurement complaints. The fact that the vast majority of *AIT* disputes relate to federal procurement indicates that, if the *AIT* were made legally binding, the frequency of disputes could rise dramatically. A second, smaller group of 14 complaints have been filed regarding labour mobility. Of the 78 complaints, 31 have been upheld through the various stages of the dispute resolution process.

To date, only two disputes have gone to an *AIT* panel for resolution. The first, however, set an especially damaging precedent. The case was against a federal government ban on the import and interprovincial trade in MMT, a gasoline additive strongly believed to be a neurotoxin. In the MMT case, the *AIT* panel ruling against the federal government blatantly disregarded the "precautionary principle" as a legitimate ground for setting environmental policy.⁶

This case then set the stage for a NAFTA investor-state dispute with the Ethyl Corporation, in which the federal government settled with Ethyl for \$20 million, rescinded the MMT ban, and made a public apology absolving Ethyl and MMT of any health risk. There is a serious risk that this unfortunate ruling could be invoked by other foreign investors under international agreements whenever, in the future, Canada tries to invoke the precautionary principle. While the damage has already been done in the MMT case, to avoid future challenges to Canadian environmental protection measures, governments should now amend the *AIT* to greatly strengthen recognition of the precautionary principle.

IV. CURRENT NEGOTIATIONS

THE *AIT*, AS A PROCESS, IS UNDER CONSTANT REVIEW. Since the original 1995 *Agreement*, three amendments have been made, and all chapters have an ongoing review component. The current negotiations, however, hinge on proposed structural reforms and a few key sectoral initiatives to broaden and deepen the *Agreement*.

At the broadest level, some governments favour a change in the nature of the *AIT* and how it will be amended in the future. The *AIT* is considered to be a political agreement – there is nothing to stop a government from defying the rules if it feels compelled to do so. The federal government and some provincial governments (notably Alberta) are pushing to transform the *AIT* into a legally binding agreement that would include enforceable dispute resolution.

In addition, the federal government and the government of Alberta want to eliminate the current screening process for investor-state disputes – a move that would bolster the hand of corporations that want to challenge provincial regulations. This would make the investor-state process much more like that in the NAFTA. Expanding the *AIT* dispute

⁶ The precautionary principle is a "better safe than sorry" approach to environmental and health protection that recognizes the right and responsibility of governments to take measures to protect the environment or human health even in the absence of scientific certainty about risks.

settlement process would move further down the road of creating a parallel, closed and unaccountable process for business to attack government regulation – a development that would undermine legislatures, the courts and citizens' rights.

Other potential changes concern how governments amend the *AIT* itself. The current *AIT* process is based on consensus decision-making. Some governments want to change this to a majority-rule process, which would ease expansion of the *AIT* by enabling a majority of provinces to override the concerns and interests of the minority. Some parties also want the *Agreement* to be an "all-or-nothing" proposition. This would mean that provinces could not opt out of certain parts of the *AIT*, as BC and the Yukon have done, for example, with procurement in the MASH (municipalities, academic institutions, school boards and hospitals) sector.

In effect, some governments are looking to add more legal restraints to the existing *AIT* handcuffs on the activities of provincial governments. These proposed changes, if passed, are of Constitutional magnitude and would have a lasting impact on the future development of both Canada and individual provinces.

Negotiations are also on in specific areas. An agreement on an Energy chapter has been reached, but has not been released for public comment. The secrecy surrounding the draft text is all too typical of the *AIT* process, and is highly problematic in terms of assessing potential costs and benefits. It is unclear what "trade barriers" the *Agreement* is intended to address, or why an agreement on energy is even necessary at all, since to the extent that energy is traded, trade patterns are north-south, not east-west.

It is quite likely, however, that the Energy chapter will lock in existing levels of deregulation, while pushing for more in the future. This could have a serious impact on the ability of provincial energy utilities to meet consumer energy needs at affordable prices (energy deregulation in areas like California, for example, has been an absolute disaster). According to media reports, the energy chapter would prohibit governments from taking measures to ensure local and regional benefits from future energy development projects, and may even jeopardize existing federal-provincial agreements to promote regional benefits from offshore oil development projects for Nova Scotia and Newfoundland.

Like the original *AIT*, procurement is a core issue in the current negotiations. There are a number of areas that are currently excluded from the procurement chapter:

- British Columbia, Saskatchewan, Quebec and the federal government have exempted some of their Crown corporations;

- BC and the Yukon have exempted their MASH (municipalities, academic institutions, school boards and hospitals) sectors;
- Health and social services are currently excluded from the procurement chapter; and,
- The procurement chapter also excludes contracts with non-profit providers, an important exemption in cases where social services are delivered through contracts awarded to non-profits.

Changes to the Procurement chapter that affect these exclusions will have an impact on public services and social programs in Canada. In particular, including health and social services could weaken exemptions in the NAFTA and the WTO General Agreement on Trade in Services. Foreign suppliers with a local presence would have to be treated as favourably as Canadian suppliers, a shift that would provide "back-door" access to the Canadian health care and social services system by US and other for-profit corporations.

V. MOVING FORWARD

THE *AIT* IS AN ELABORATE, LEGALISTIC FRAMEWORK to deal with what are, for the most part, minor disputes over government procurement, and to a lesser extent, labour mobility. While there is a need for practical solutions in certain areas, it is difficult to reconcile this with the broad scope of the existing *Agreement*. It is tempting to dismiss the *AIT* as an unwieldy, and largely ineffective, solution in search of a problem.

Such a dismissal, however, neglects a more sinister and threatening aspect of the *AIT*. The current *AIT* process is a thinly disguised attempt to transform the Canadian union by implementing NAFTA-style rules through the back door.

There is an underlying incompatibility between the narrow, largely commercial, aims of the *AIT* and the broader requirements for a stronger, healthier Canadian union. As previously noted, it is unacceptable to label differences in approach to environmental protection, regional economic development, resource management, or other legitimate policy issues as "internal trade barriers". Many so-called interprovincial trade barriers result from legitimate public policy choices. It is neither possible nor desirable within a federal system to do away with differences in policy approaches that allow democratically elected governments to respond to local needs and the aspirations of their citizens.

A strong Canadian union requires policy choices that support sustainable economic development, including strengthened environmental protection, labour standards, and consumer protection. It also requires intergovernmental processes that are open and accountable. The current

AIT negotiating process is illegitimate because it works in the opposite direction. There is simply no excuse for the secrecy that now shrouds *AIT* negotiations and for negotiating texts (such as the draft Energy chapter) not being made immediately available to the public.

There are certainly some practical problems and issues with regard to how people, goods and services are treated across provinces. For example, there should be greater efforts among the provinces to coordinate licensing across professional bodies so that labour mobility is not unduly impaired. But there is clear need to focus on specific problems and not on general rules that create legalistic straightjackets.

A pragmatic approach might even address some issues that reflect the interaction between economic and social policy that have thus far not made their way onto the *AIT* negotiating table. As economist Brian Copeland notes:

The *AIT* does not, however, try to prevent social dumping (such as the use of weak labour standards to attract business). Nor is there a provision dealing with attempts by one province to reduce its social assistance responsibilities with direct or indirect inducements to move to provinces with different regimes. (p. 36)

The danger in current negotiations is that legitimate standards in the public interest will be undermined by challenges from corporations or other governments with lower standards. In addition, expanding the *AIT* would exacerbate the risk of a NAFTA or WTO challenge to vital Canadian public policies. Much will depend on which *AIT* cases are brought before dispute panels and how they are arbitrated, rather than, as should be the case, on decisions made by elected governments.

The existing framework already sets up challenges to standards and regulations in the name of opening up trade. Attempts to make the *AIT* a legal document with enforcement teeth, as well as a stronger capacity for investor suits, would further box in policy makers, but would provide little in the way of benefits to citizens.

At this time, efforts to deepen and broaden the *AIT* should be opposed. The existing *AIT* is a deeply flawed agreement, and there is no political will among the federal industry minister and the provinces driving the current negotiations to enhance governments' ability to take environmental protection measures, to preserve the public, non-profit character of Canadian health, education and social services, or to promote economic development for disadvantaged groups or regions.

Quite the contrary. The *AIT*'s flaws would become positively dangerous if, as envisaged, its provisions were ever made legally enforceable. Far

from expanding the existing *Agreement*, the *AIT* should be amended to entrench the precautionary principle, insulate environmental protection measures from challenge, and to adopt a clear-cut general exclusion for Canada's public and not-for-profit health care, education and social services sectors. The *AIT's* investor-state dispute settlement provisions should be eliminated. *AIT* negotiating texts and processes must be made public. Finally, proposed solutions to alleged commercial barriers must have sufficient flexibility, so that they do not compromise governmental responsibilities to protect the public interest in the areas of labour, environment, consumer protection and public services. Anything less is to settle for the trade equivalent of magic beans.

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